

### **REMARKS**

This is a full and timely response to the Office Action mailed November 16, 2004. Reconsideration and allowance of the application and presently pending claims are respectfully requested. Upon entry of the amendments in this response, claims 19 – 20, 22 – 23, and 26 – 41 are pending. In particular, Applicants have amended claims 19 – 20, 22 – 23, and 26 – 28, and have added claims 29 – 41. Applicants should not be presumed to agree with any statements made by the Examiner in the Office Action unless otherwise specifically indicated by the Applicants. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **I. Claim 19 Complies with 35 U.S.C. §112, First Paragraph**

The Office Action rejects claim 19 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Office Action alleges that “the claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” (Office Action, pg. 2).

Specifically, the Office Action alleges that “the specification does not disclose monitoring [sic] amount of data ‘transferred across said link’ or [sic] amount of ‘data lost’ permitting a flexible billing structure.” (Office Action, pg. 2). Furthermore, the Office Action alleges that “the specification does disclose collecting bit error rate and ‘amount of data rejected because they were in excess of requested bandwidth’,” but that the specification “does not state ‘transferred across’.” (Office Action, pg. 2). Furthermore, the Office Action

alleges that “the specification, also, does not go into detail of how the BER permits a flexible billing structure.” (Office Action, pg. 3).

Without acquiescing to the argument set forth in the Office Action, in an effort to advance prosecution of the application, Applicants have amended claim 19 to overcome the §112 rejection. Accordingly, Applicants submit that claim 19, as amended, satisfies 35 U.S.C. 112, first paragraph. For example, claim 19 no longer recites monitoring an “amount of data ‘transferred across said link’” as alleged in the Office Action. Rather, claim 19 now recites “monitoring a length of an upstream connection of a network access device,” (*emphasis added*) and “monitoring an amount of data transmitted across said upstream connection” (*emphasis added*).

Claim 19 also no longer recites “data lost.” Rather, amended claim 19 recites “monitoring an amount of data rejected as exceeding a requested bandwidth,” which the Office Action apparently agrees is disclosed.

Finally, as to the Office Action allegation that the specification does not “go into detail of how the BER permits a flexible billing structure,” claim 19 no longer recites “the statistics permitting a flexible billing structure.”

Accordingly, Applicants submit that claim 19, as amended, satisfies 35 U.S.C. 112, first paragraph and respectfully requests that the examiner withdraw the rejection.

## **II. U.S. Pat. No. 5,790,806 and U.S. Pat. No. 5,966,163 Provide Adequate Support Under §112 for Claim 19**

The Office Action alleges that “the prior applications (USPN 5,790,806 and U.S. 5,966,163) upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claim 19 of this application.” (Office Action, pg. 3). Specifically, the Office Action alleges that “both patents only collect data upstream from a device to a server but not downstream,” and that “the specifications of the patents do not disclose any recording of amount of data transferred across a link from a server to the device (downstream).” (Office Action, pg. 3).

Without acquiescing to the argument set forth in the Office Action, in an effort to advance prosecution of the application, Applicants have amended claim 19 to more clearly conform to the language recited in U.S. Pat. No. 5,790,806 (the ‘806 patent) and U.S. Pat. No. 5,966,163 (the ‘163 patent).

Claim 19, as amended, now recites “monitoring a length of an upstream connection of a network access device and storing data related thereto.” (*Emphasis added*). The ‘806 patent discloses at least one non-limiting example of this in at least the following locations of the detailed description: col. 5, lines 5 – 8 (“each distribution hub ... may maintain statistics about every connection travelling in the upstream direction” and “these statistics may include ... the length of the connection”), and col. 10, lines 43 – 46 (“Types of statistics to be collected include: ... length of connection”).

Claim 19, as amended, further recites “monitoring an amount of data transmitted across said upstream connection and storing data related thereto” (*emphasis added*). The ‘806 patent discloses at least one non-limiting example of this in at least the following locations of the

detailed description: col. 5, lines 5 – 8 (“each distribution hub ... may maintain statistics about every connection travelling in the upstream direction” and “these statistics may include ... the number of cells transmitted”), and col. 10, lines 43 – 46 (“Types of statistics to be collected include: ... total number of cells transmitted”).

Claim 19, as amended, further recites “monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto.” The ‘806 patent discloses at least one non-limiting example of this in at least the following locations of the detailed description: col. 10, lines 4 – 11 (“Processor 261 is programmed with a scheduling algorithm which enables the processor 261 to monitor the amount of information transmitted by each of the users,” and “if a user tries to exceed its authorized transmission bandwidth, it will be notified that the transmission cannot be sent”), and col. 10, lines 43 – 51 (“Types of statistics to be collected include: ... number of cells rejected because they were in excess of requested bandwidth”).

Accordingly, for at least these reasons, Applicants submit that independent claim 19 of the instant application is entitled to the benefit of the ‘806 patent and the ‘163 patent.

### **III. Claims 19, 20, 22, 23 and 26 - 28 are Patentable Over *Bowcutt***

The Office Action rejected claims 19, 20, 22, 23 and 26 - 28 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,308,328 to Bowcutt (“*Bowcutt*”). For the reasons set forth below, the rejection should be withdrawn and the claims allowed.

### ***Independent Claim 19***

As discussed above, claim 19 is believed to be entitled to at least the April 3, 1996 filing date of U.S. Pat. No. 5,790,806. Thus, *Bowcutt* is not a 35 U.S.C. § 102(e) reference because the earliest priority date of *Bowcutt* is January 17, 1997.

### ***Dependent Claims 20, 22, 23 and 26 - 31***

Applicants also submit that dependent claims 20, 22, 23 and 26 – 28 (and newly added claims 29 – 31), which depend from independent claim 19, are also believed to be entitled to at least the April 3, 1996 filing date of U.S. Pat. No. 5,790,806. Thus, *Bowcutt* is not a 35 U.S.C. § 102(e) reference for any of dependent claims 19, 20, 22, 23 and 26 – 31 because the earliest priority date of *Bowcutt* is January 17, 1997.

Specifically, non-limiting support for dependent claims 20 and 22 may be found in at least the following portion of the '806 patent to which priority is claimed: col. 10, lines 44 – 50. Non-limiting support for dependent claim 23 may be found in at least the following portions of the '806 patent to which priority is claimed: col. 4, line 52 through col. 5, line 13; and col. 9, lines 1 – 10.

In addition, non-limiting support for dependent claim 26 (and newly added claim 29) may be found in at least the following portions of the '806 patent to which priority is claimed: col. 13, lines 30 – 36 and col. 17, lines 8 – 10. Non-limiting support for dependent claim 27 may be found in at least the following portions of the '806 patent to which priority is claimed: col. 10, lines 40 – 42 and col. 17, lines 13 – 14. Furthermore, non-limiting support for dependent claim 28 may be found in at least the following portion of the '806 patent to which priority is claimed: col. 10, lines 40 – 51.

In addition, non-limiting support for newly added dependent claims 30 and 31 may be found in at least the following portion of the '806 patent to which priority is claimed: col. 10, lines 40 – 49.

Therefore, Applicants submit that independent claim 19 and dependent claims 20, 22 – 23, and 26 – 31, which depend from claim 19, are allowable over *Bowcutt* for at least the foregoing reasons.

### III. Claims 19, 20, 22, 23 and 26 - 28 are Patentable Over *Liebowitz*

The Office Action further rejects claims 19, 20, 22, 23, and 26 – 28 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,812,545 to Liebowitz (“*Liebowitz*”). For the reasons set forth below, the rejection should be withdrawn and the claims allowed.

#### *Independent Claim 19*

Independent claim 19, as amended, recites:

19. A method of providing statistics for billing users of data services provided over a cable television network comprising the steps of:  
monitoring a length of an upstream connection of a network access device and storing data related thereto;  
monitoring an amount of data transmitted across said upstream connection and storing data related thereto; and  
***monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto.***

(*Emphasis added*). Applicants submit that claim 19 is patentable over *Liebowitz* for at least the reason that *Liebowitz* does not disclose, teach, or suggest the features emphasized in bold text above.

Unlike claim 19, which recites “*monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto*,” *Liebowitz* discloses, at most, that “terminal 12 can allow the user 174 to transmit bursts at 128 kbps because of its ability to ensure that the other input generators (i.e. users 176 and 178) do not transmit bursts at the same time.” (Col. 17, lines 22-25). Furthermore *Liebowitz* discloses that “terminal 12 can request more slots 99 during which to transmit bursts 90 if more bandwidth is required,” (col. 11, lines 22-24) and that “requests for additional stream slots or guaranteed slots that exceed this limit are rejected by the terminal 12 operating as the MT.” (Col. 12, lines 57-59).

Accordingly, although the system described in *Liebowitz* apparently requires “requests” to transmit (which apparently may be rejected), there is no apparent disclosure of data that exceeds the request being “rejected.” And even assuming, *arguendo*, that *Liebowitz* does disclose rejecting data exceeding a requested bandwidth, this information is not monitored or stored. Accordingly, *Liebowitz* does not disclose, teach, or suggest “*monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto*,” as recited in independent claim 19.

#### ***Dependent Claims 20, 22, 23 and 26 – 31***

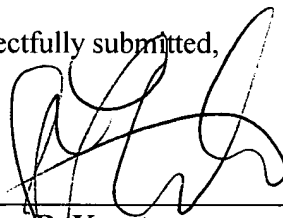
Applicants submit that the 35 U.S.C. § 102(e) rejection to claims 20, 22, 23, and 26 – 28 is rendered moot in light of any of the arguments made above and, therefore, the claims are allowable as a matter of law for at least the reason that claims 20, 22, 23, and 26 – 28 contain all the features and elements of their corresponding independent claim. For at least this reason, Applicants request that the rejection of claims claims 20, 22, 23, and 26 – 28 be withdrawn.

Furthermore, newly added claims 29 – 31, which depend from independent claim 19, are believed to be allowable for at least the same reasons.

## **CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed and that the pending claims are in condition for allowance. Although some dependent claim rejections and some obviousness rejections are explicitly addressed above, the omission of arguments for other claims is not intended to be construed as an implied admission that Applicants agree with the rejection or finding of obviousness for the respective claim or claims. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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